

October 6, 2016

Harvey Stenger, Ph.D.  
President  
State University of New York  
Binghamton University  
Office of the President  
Post Office Box 6000  
Binghamton, New York 13902-6000

Re: Case No. 02-16-2193  
State University of New York - Binghamton University

Dear President Stenger:

This letter is to notify you of the determination made by the U.S. Department of Education, Office for Civil Rights (OCR) regarding the above-referenced complaint filed against the State University of New York - Binghamton University (the University). Specifically, the complainant alleged that the University discriminated against her on the basis of her disability, or in the alternative, retaliated for her disability-related advocacy, by: terminating her field placement at the xxxx, resulting in her dismissal from the University's Master in Social Work program, in or around xxxx (Allegation 1); and denying the academic appeals the complainant filed with the University, on or about xxxx (Allegation 2). The complainant also alleged that the University retaliated for her disability-related advocacy, by (a) banning the complainant from the University Downtown Center and (b) filing student conduct charges against the complainant, in or around xxxx (Allegation 3).

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504), as amended, 29 U.S.C. § 794, and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in programs and activities receiving financial assistance from the U.S. Department of Education (the Department). OCR also is responsible for enforcing Title II of the Americans with Disabilities Act of 1990 (the ADA), 42 U.S.C. § 12131 et seq., and its implementing regulation at 28 C.F.R. Part 35. Under the ADA, OCR has jurisdiction over complaints alleging discrimination on the basis of disability that are filed against certain public entities. The University is a recipient of financial assistance from the Department, and is a public postsecondary education institution. Therefore, OCR has jurisdictional authority to investigate this complaint under both Section 504 and the ADA.

The regulation implementing Section 504, at 34 C.F.R. § 104.61, incorporates by reference 34 C.F.R. § 100.7(e) of the regulation implementing Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d et seq., which provides that no recipient or other person shall intimidate, threaten, coerce or discriminate against any individual for the purpose of interfering with any right or privilege secured by regulations enforced by OCR or because one has made a complaint, testified, assisted or participated in any manner in an investigation, proceeding or hearing held in connection with a complaint. The regulation implementing the ADA contains a similar provision at 28 C.F.R. § 35.134.

In analyzing whether retaliation occurred, OCR must first determine whether the three prima facie elements of retaliation can be established: (1) whether the complainant or alleged injured party engaged in a protected activity; (2) whether the complainant or alleged injured party experienced a materially adverse action by the recipient; and (3) whether there is a causal connection between the protected activity and the materially adverse action. When the evidence demonstrates a prima facie case of retaliation, OCR then determines whether the recipient has a legitimate, non-retaliatory reason for the challenged action or whether the reason adduced by the recipient is a pretext to hide its retaliatory motivation.

In its investigation, OCR interviewed several University staff members, and reviewed information that the complainant and the University submitted.

OCR determined that the complainant enrolled as a student in the University's Master in Social Work (MSW) program (the Program) in fall 2013. OCR determined that the complainant never registered with the University's Services for Students with Disabilities (SSD) office as a student with a disability while she was enrolled at the University.

OCR determined that the complainant engaged in protected activity when on or about xXXX, she complained to University staff members that she believed she had been terminated from a field placement at XXXX because of her disability; during the period from in or around XXXX, she filed academic appeals in which she complained of disability discrimination; and on or about XXXX, the complainant complained to University staff that she had been subjected to discrimination.

With respect to Allegation 1, the complainant alleged that the University discriminated against her on the basis of her disability, or in the alternative, retaliated for her disability-related advocacy, by terminating her from the field placement at the XXXX, resulting in her dismissal from the Program, in or around XXXX. Specifically, the complainant asserted that she was terminated from the XXXX field placement because the XXXX Director regarded her as having a mental impairment. The complainant also asserted that during the field placement, she disclosed to her XXXX field instructor her status as a xxxx, and believes that the field instructor's knowledge of her disability could have negatively influenced her perceptions of the complainant.

All MSW students must successfully complete 16 credit hours (510 practice hours) of field instruction in order to graduate. Additionally, pursuant to the MSW program policy, an MSW

student who receives a failing grade (an “F”) in any course is automatically dismissed from the Program.

During the xxxx semester, the complainant enrolled in the field education course - XXXX (the Course); and in or around XXXX, began her field placement at XXXX. On xxx, XXXX terminated the complainant’s field placement, citing “unprofessional behavior.” Instead of issuing the complainant a failing grade, her XXXX and the University’s XXXX gave the complainant an “Incomplete” grade in the Course.

In or around XXXX, following the complainant’s termination from XXXX, the Program arranged a second field placement for the complainant at xxxx so that she could complete the Course. On XXXX, the complainant started the new field placement at XXXX under the supervision of a field supervisor. On or about XXXX, the Director communicated to the field liaison that she had concerns regarding the complainant’s inability to respect authority, accept feedback, and the implications this had for work with clients. The University stated that on or about JXXXX, the XXXX met with the complainant, discussed the concerns raised by XXXX staff regarding her interactions with staff, and offered the complainant an eight-week extension of her field placement to give her additional time to address the concerns. The University further stated that on or about XXXX, XXXX staff also met with the complainant to discuss their concerns related to the complainant’s self-regulation of emotional responses with colleagues, particularly supervisors, which included disrespect in terms of words, tone, and demeanor.

On XXXX, the complainant signed a Learning Contract Supplement, outlining specific goals for the complainant and formally extending her field placement by eight weeks, with a completion date of XXXX.<sup>1</sup> The University stated that during a meeting held on XXXX, the xxxx Director and field supervisor clarified for the complainant the clinic expectations; however, the complainant continued to deflect, rationalize, and minimize their concerns. During a telephone conference held on XXXX, in which the complainant, the XXXX, and XXXX staff members participated, XXXX notified the complainant it was terminating her field placement. On her final evaluation, the XXXX gave the complainant unsatisfactory scores on eight practice behaviors required by the Council on Social Work Education.

In an email dated XXXX, the complainant expressed concerns that she had been treated differently based on her disability, XXXX. Via email on XXXX, the University’s XXXX, advised the complainant that she had received an “Unsatisfactory” grade in the Course, which is the equivalent of an F grade. By letter dated XXXX, the University dismissed the complainant from the Program, citing her failing grade in the Course.

On October 6, 2016, the University voluntarily entered into the attached resolution agreement to resolve Allegation 1, in accordance with Section 302 of OCR’s Case Processing Manual.

With respect to Allegation 2, the complainant alleged that the University discriminated against her on the basis of her disability, or in the alternative, retaliated for her disability-related

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<sup>1</sup> The document stated: “At the time of the evaluation, the supervisory team does not feel they can provide a satisfactory rating of the student’s field performance. The XXXX team is willing to invest additional resources, and extended the complainant’s field placement for [eight] weeks, with a completion date of XXXX.”

advocacy, by denying the academic appeals she filed with the University, on or about XXXX. OCR determined that during the period from on or about XXXX, the complainant filed multiple academic appeals with the University, in which she appealed her failing grade in the Course and raised allegations of discrimination on the basis of disability.<sup>2</sup> OCR determined that on or about XXXX, the University denied the complainant's appeals, or declined to review her appeals, and upheld her failing grade in the Course.

On October 6, 2016, the University voluntarily entered into the attached resolution agreement to resolve Allegation 2, in accordance with Section 302 of OCR's Case Processing Manual.

With respect to Allegations 3(a) and 3(b), the complainant alleged that the University retaliated for her disability-related advocacy, by banning her from the University Downtown Center (UDC); and filing student conduct charges against her, in or around XXXX. The complainant denied that she engaged in any inappropriate behavior; she asserted that the XXXX for the XXXX the University's College of Community and Public Affairs (CCPA) had her banned from the UDC because on or about XXXX, the complainant told the XXXX that she would file a discrimination claim against her.

The University's Code of Student Conduct (the Code) states that a student may be denied access to facilities if the "continued presence of the student would constitute a clear and present danger to themselves, to the safety of others or to the property of the University."

The University stated that on or about XXXX, the complainant called the CCPA XXXX office to schedule a meeting with the CCPA XXXX. The University stated that the CCPA XXXX told the complainant that the CCPA XXXX could not meet her on this date; however, the complainant responded that she would be going to the office anyway and would stay there until she could see the CCPA XXXX. Later that day, the complainant appeared at the CCPA XXXX Office in the UDC, asking XXXX XXXX to permit her to speak with the CCPA XXXX. The University stated that when the XXXX explained that the CCPA XXXX was busy, the complainant became angry and walked XXXX XXXX XXXX and barged into the CCPA XXXX office. Staff members present described the complainant's tone during this interaction as ranging from firm/determined to loud and yelling.

On XXXX, University staff members made statements to campus security regarding the incident that occurred on XXXX in the CCPA XXXX office, as well as other incidents involving the complainant. Thereafter, campus security escorted the complainant from the UDC. The University's XXXX of Students also issued a letter to the complainant on XXXX, stating that the Office of Student Conduct would be investigating reports of the complainant's "repeated disruptive behavior," including the previous week's "confrontation." The letter stated that while the investigation was in progress, the complainant was banned from entering the UDC.

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<sup>2</sup> OCR reviewed the five written appeals the complainant submitted the University, a total of approximately eighteen single-spaced pages. The appeals focus primarily on issues unrelated to alleged disability discrimination, including unfairness in grading; concerns about the Program's policy on failing classes; unease in the Course; her field supervisor's inexperience; due process concerns; and responses to her supervisor's specific criticisms.

In an email dated XXXX, the XXXX XXXX XXXX informed the complainant that she had learned that on or about XXXX, the XXXX had recommended that the complainant be dismissed from the Program. The XXXX XXXX XXXX further stated that, as a result, the complainant did not have academic or business needs requiring her to be in the UDC.

The University provided to OCR the investigation report that the University's Office of Student Conduct prepared in response to the complainant's actions on XXXX. The Office of Student Conduct's investigation, which included numerous witness interviews, concluded that the complainant had engaged in a pattern of verbally aggressive and physically intimidating behavior throughout her time at the University. The report cited the incident on XXXX, as well as multiple other incidents during which the University found that the complainant had been verbally aggressive and/or physically intimidating with professors, staff, and other students. The University stated that it did not file student conduct charges against the complainant because the complainant was no longer a student at the University by the conclusion of the Office of Student Conduct's investigation in or around XXXX.

OCR reviewed documentation the University provided for academic years 2013-2014, 2014-2015, and 2015-2016. OCR determined that during this time, the University banned from the University two other students in the Program, not including the complainant; neither of these students had engaged in protected activities.

With respect to Allegation 3(a), OCR determined that the University proffered a legitimate, non-retaliatory reason for banning the complainant from the UDC during its investigation of the incident on XXXX; namely, University staff members reported that the complainant had engaged in repeated disruptive behavior. OCR determined that the proffered reasons were not pretext for retaliation, as the University investigated the complainant's actions; the complainant's conduct was well-documented; the University actions were in accordance with University policy; and the University similarly banned other Program students who had not engaged in protected activities. Based on the above, OCR determined that there was insufficient evidence to substantiate the complainant's allegation that the University retaliated for her disability-related advocacy, by banning her from the UDC, in or around XXXX. Accordingly, OCR will take no further action with respect to Allegation 3(a).

With respect to Allegation 3(b), OCR did not find any evidence to substantiate that the University filed student conduct charges against the complainant; as such, OCR determined that the University did not subject the complainant to a materially adverse action as alleged. Therefore, OCR determined that a prima facie case of retaliation could not be established. Absent a prima facie case, OCR does not proceed further with the retaliation analysis. Based on the above, OCR determined that there was insufficient evidence to substantiate the complainant's allegation that the University retaliated for her disability-related advocacy, by filing student conduct charges against her, in or around XXXX. Accordingly, OCR will take no further action with respect to Allegation 3(b).

As previously stated, on October 6, 2016, the University voluntarily entered into the attached resolution agreement to address Allegations 1 and 2. OCR will monitor implementation of the

resolution agreement. If the University fails to implement the terms of the resolution agreement, OCR will resume its investigation of Allegations 1 and 2.

This letter sets forth OCR's determination in an individual OCR case. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public. The complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

Please be advised that the University may not harass, coerce, intimidate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, the complainant may file another complaint alleging such treatment.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. In the event that OCR receives such a request, it will seek to protect, to the extent provided by law, personally identifiable information that if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

If you have any questions regarding OCR's determination, please contact Paige Wallace, Compliance Team Attorney, at (646) 428-3830 or [paige.wallace@ed.gov](mailto:paige.wallace@ed.gov); Stacy Bobbitt, Compliance Team Investigator, at (646) 428-3823 or [stacy.bobbitt@ed.gov](mailto:stacy.bobbitt@ed.gov); or Nadja Allen Gill, Compliance Team Leader, at (646) 428-3801 or [nadja.r.allen.gill@ed.gov](mailto:nadja.r.allen.gill@ed.gov).

Sincerely,

/s/

Timothy C.J. Blanchard

cc: XXXX, Esq.